

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

OLER ADAMS, JR.,)
)
)
Plaintiff,)
)
-vs-) Case No. CIV-10-920-F
)
)
JUSTIN JONES, DIRECTOR, et al.,)
)
)
Defendant.)

ORDER

On March 29, 2012, United States Magistrate Judge Robert E. Bacharach issued a Report and Recommendation (doc. no. 96), wherein he recommended that the motion to dismiss filed by defendants, Justin Jones, Don Sutmiller and Genese McCoy, should be granted in part and denied in part. Magistrate Judge Bacharach specifically found that defendants Jones and McCoy are entitled to dismissal of all of plaintiff's claims and that defendant Sutmiller is entitled to dismissal on plaintiff's equal protection claim. However, Magistrate Judge Bacharach found that plaintiff's claims against defendant Sutmiller involving denial of due process and failure to provide proper medical care should survive dismissal.

Defendant Sutmiller has objected to the Report and Recommendation, arguing that Magistrate Judge Bacharach erred in recommending that the denial of medical care and due process claims should remain. Plaintiff has also objected to the Report and Recommendation, arguing that Magistrate Judge Bacharach erred in recommending the claims against defendant, Justin Jones, should be dismissed. Pursuant to 28 U.S.C. § 636(b)(1), the court has conducted a de novo review of the matter. In so doing, the court has not considered any arguments which were not presented to Magistrate Judge Bacharach in the dismissal papers. Objections to a

report and recommendation are not a second bite at the apple, and arguments not raised before Magistrate Judge Bacharach are deemed waived. United States v. Garfinkle, 261 F.3d 1030, 1031 (10th Cir. 2001) (“In this circuit, theories raised for the first time in objections to the magistrate judge’s report are deemed waived.”); Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996) (“Issues raised for the first time in objections to the magistrate judge’s recommendation are deemed waived.”) Having conducted its de novo review, the court concurs with the recommended rulings. The court agrees with Magistrate Judge Bacharach’s analysis in its entirety. The court therefore accepts, adopts and affirms Magistrate Judge Bacharach’s recommended rulings that defendant Jones is entitled to dismissal of all of plaintiff’s claims and that plaintiff’s claims against defendant Sutmiller involving denial of due process and failure to provide proper medical care claim survive dismissal.

No party has objected to Magistrate Judge Bacharach’s recommended rulings relating to the dismissal of plaintiff’s claims against defendant McCoy and to the dismissal of plaintiff’s equal protection claim against defendant Sutmiller. As no objection has been lodged as to those recommended rulings, the court adopts, accepts and affirms Magistrate Judge Bacharach’s recommended rulings as to the dismissal of those claims.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Robert E. Bacharach on March 29, 2012 (doc. no. 96) is **ACCEPTED, ADOPTED and AFFIRMED**. The Motion to Dismiss filed by defendants, Justin Jones, Genese McCoy and Don Sutmiller filed August 15, 2011 (doc. no. 53) is **GRANTED in part and DENIED in part**. Plaintiff’s claims against defendants, Justin Jones and Genese McCoy, are dismissed pursuant to Rule 12(b)(6), Fed. R. Civ. P. Plaintiff’s equal protection claim against defendant Sutmiller is dismissed pursuant to Rule 12(b)(6), Fed. R. Civ. P. Plaintiff’s claims against

defendant Sutmiller involving denial of due process and failure to provide proper medical care remain pending.

DATED May 3, 2012.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

10-0920p005.wpd